Supreme Court, U. S.
FILED
OCT 20 1976
MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-559

DIVISION 241, AMALGAMATED TRANSIT UNION (AFL-CIO),

*Petitioner,*

*vs.*

LAWRENCE SUSCY, DONALD WALSH, JAMES R. QUINN, WALLACE D. JOHNSON, ERNIE BANKS, JAMES BLAA, JOHN DOE AND RICHARD ROE, INDIVIDUALLY AND AS OFFICERS AND REPRESENTATIVES OF THE CHICAGO TRANSIT AUTHORITY, A MUNICIPAL CORPORATION,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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**No.**

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DIVISION 241, AMALGAMATED TRANSIT UNION (AFL-CIO),

*Petitioner,*

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LAWRENCE SUSCY, DONALD WALSH, JAMES R. QUINN, WALLACE D. JOHNSON, ERNIE BANKS, JAMES BLAA, JOHN DOE AND RICHARD ROE, INDIVIDUALLY AND AS OFFICERS AND REPRESENTATIVES OF THE CHICAGO TRANSIT AUTHORITY, A MUNICIPAL CORPORATION,

*Respondents.*

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in case no. 76-1166 on July 22, 1976.

## OPINION BELOW.

The opinion of the United States Court of Appeals for the Seventh Circuit filed on July 22, 1976 is reported at 538 F. 2d 1264 and appended at A. 1-5, *infra*. The memorandum opinion and order of the United States District Court for the Northern District of Illinois, Eastern Division, entered September 9, 1975 is reported at 405 F. Supp. 750 and appended at A. 6-9, *infra*.

## JURISDICTION.

This Court has jurisdiction under 28 USC § 1254(1). The judgment of the United States Court of Appeals for the Seventh Circuit was entered on July 22, 1976.



## QUESTIONS PRESENTED.

1. Whether the court of appeals' decision that public transit bus operators are not entitled to the state statutory protection against the taking of blood and urine tests without their express consent, afforded to all motorists by the driving under the influence of alcohol or narcotics provisions of the Illinois Motor Vehicle Code, is consistent with the bus operators' fourth and fourteenth amendment rights and with principles of comity.

2. Whether the unilaterally promulgated work rules of a public transit authority requiring the automatic discharge of its bus operators who refuse to submit to blood and urine tests when they are involved in "any serious accident" or "suspected of being under the influence" of alcohol or a narcotic are facially invalid under the fourth and fourteenth amendments.

## CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED.

This case involves the Fourth Amendment and Fourteenth Amendment to the Constitution of the United States (A. 10); the Civil Rights Act of 1871, 42 USC § 1983 (A. 10); the Metropolitan Transit Authority Act, Ill. Rev. Stat. 1975, ch. 111⅔, §§ 319, 330, 331 (A. 11); the Illinois Motor Vehicle Code, Ill. Rev. Stat. 1975, ch. 95½, §§ 11-501, 11-501.1 (A. A. 16-24); and the respondents' General Rule Book Rules 10 and 14(a) and General Bulletin G2-75 (A. 24-5).

## STATEMENT OF THE CASE.

### A. The Proceedings in the District Court.

The petitioner is a union which represents 5,500 bus operators and other employees of the Chicago Transit Authority (the Authority), a municipal corporation created by act of the Illinois General Assembly.[1] The respondents are the members of the Chicago Transit Board (the Board), which is the Authority's governing and administrative body,[2] and supervisory personnel of the Authority.

The petitioner filed a four count complaint in the United States District Court for the Northern District of Illinois, Eastern Division (the district court), against the respondents. Count I of the complaint alleged that the Board had promulgated, and the Authority's supervisory personnel enforced, Rules 10 and 14 of the General Rule Book and General Bulletin G2-75 (the work rules) by requiring, under pain of automatic discharge,[3] that the bus operators submit to blood and urine tests whenever they are involved in "any serious accident" or "suspected of being under the influence" of alcohol or a narcotic.

It was claimed that the work rules facially violate the bus operators' fourth and fourteenth amendment rights because: (1) the work rules' standards for triggering the test are less than probable cause; (2) the standards are vague, overbroad and not reasonably related to legitimate state interests; and (3) the tests

1. Metropolitan Transit Authority Act. ch. 111⅔, § 319, A. 11.

2. *Id.*, ch. 111⅔, §§ 319, 330, 331; A. 11.

3. In response to the petitioner's interrogatories the respondent admitted that ten bus operators were discharged between April 2, 1975 and August 11, 1975 for, *inter alia,* violations of the work rules. The district court acknowledged that the work rules were enforced by the respondents. A. 8.



and conditions for their administration are discriminatorily more onerous than those required of all other drivers by the Illinois Motor Vehicle Code.

Counts II-IV of the complaint alleged that the work rules had been applied in a constitutionally impermissible manner. The respondents moved to "strike and dismiss" the complaint for failure to state a claim upon which relief can be granted.

In a memorandum opinion the district court granted the respondents' motion to dismiss Count I reasoning that the work rules are " 'both desirable and necessary' " and " 'not * * * unreasonable.' "[4] The district court denied the motion to dismiss Counts II-IV because it could not " 'say with certainty at this time that plaintiff can prove no set of facts' " to support these allegations.[5] Subsequently the district court granted the petitioner's motion under Rule 41(a)(2), Federal Rules of Civil Procedure, to dismiss without prejudice Counts II-IV. The petitioner took a timely appeal from the dismissal of Count I.

### B. The Decision of the Court of Appeals.

After concluding that the district court's order dismissing Count I was a final order,[6] the court of appeals sustained the facial validity of the work rules and affirmed the district court. The court of appeals reasoned that because the Authority "has a paramount interest in protecting the public by assuring that bus . . . operators are fit to perform their jobs,"[7] the bus operators "can have no reasonable expectation of privacy with regard to submitting to blood and urine tests" where "the conditions under which the intrusion is made and the manner of

4. A. 2.

5. A. 2 n.1.

6. A. 2.

7. A. 4.

taking the same are reasonable."[8] It found that the conditions —i.e., the standards of involvement in a "serious accident" or suspicion of intoxication[9]— and the manner of taking the sample —i.e., hospital conducted tests—together with " 'a valid public interest,' " constituted probable cause.[10]

The court of appeals dismissed the petitioner's arguments that the bus operators could not constitutionally and statutorily be subjected to more onerous tests and conditions than those imposed uniformly by state statute on all motorists, and that a valid arrest was a condition precedent to the administering of any sobriety test.[11]

8. A. 4. The court of appeals found one of the "conditions" to be, "[a]s the record shows, [that] no medical testing of this type is required unless two supervisory employees concur." A. 4. There is no such evidence in the record, and the district court made no such finding.

9. A. 4.

10. A. 4.

11. A. 4 n. 3.



## REASONS FOR GRANTING THE WRIT.

### I.

### THE COURT OF APPEALS HAS DECIDED THE IMPORTANT STATE QUESTION CONCERNING THE UNIFORM APPLICATION OF THE DRIVING UNDER THE INFLUENCE OF ALCOHOL OR NARCOTICS PROVISIONS OF THE ILLINOIS MOTOR VEHICLE CODE IN A MANNER THAT IS INCONSISTENT WITH STATE LAW.

#### A. The Illinois Motor Vehicle Code Protects Any Person from Being Required to Take a Blood Test Without Express Consent.

The provisions of the Illinois Motor Vehicle Code relating to the driving of a motor vehicle while under the influence of intoxicating liquor or a narcotic drug[12] have been interpreted by the Illinois Supreme Court "as requiring the consent of the defendants to the taking of the blood specimens," *People* v. *Todd*, 59 Ill. 2d 534, 546 (1975), even though it is clear that a compulsory blood test does not violate any constitutional rights of an individual merely because he objected to such tests,"[13] *id.* at 544. "The obligation to obtain consent appears to be the dominant intent of the legislature * * *. [I]mplied consent was not forthcoming [from the legislature] but the consent requirement was retained." *Id.* at 542.

12. Ill. Rev. Stat. 1975, ch. 95-½, §§ 11-501, 11-501.1; A. 16-24, referred to by the court of appeals as the "Illinois breathalyzer laws," A. 4 n. 3.

13. The supreme court, like the court of appeals, A. 3 n. 2, cited *Schmerber* v. *California*, 384 U. S. 757 (1966) and *Breithaupt* v. *Abram*, 352 U. S. 437 (1957), as authority that compulsory blood tests do not violate due process, *People* v. *Todd*, 59 Ill. 2d at 544.

Therefore, the express consent provision of the statute is applicable to all persons operating a motor vehicle in the State of Illinois and, contrary to the court of appeal's conclusion, admits to no "distinction between bus drivers and other drivers [which] justifies a stricter standard for the former."[14]

**B. Implied Consent Applies Only to the Taking of a Breath Test by a Police Officer Incident to a Lawful Arrest.**

The court of appeals concluded that the bus operators give the Authority their implied consent to have their blood drawn[15] without "the requirement of a lawful arrest prior to submitting to the blood test. . . ."[16] That conclusion directly conflicts with Illinois law at two points. First, implied consent applies *only* to the taking of a breath test and not to a blood test. *People* v. *Bullard*, 61 Ill. 2d 277, 284 (1975); *People* v. *Todd*, 59 Ill. 2d 534. Second, the implied consent provisions of the statute limit the consent to a breath test "when made as an incident to and following his lawful arrest, evidenced by the issuance of a Uniform Traffic ticket, for an offense as defined in Section 11-501 of this Act or a similar provision of a municipal ordinance."[17] *Cf. People* v. *Bullard*, 61 Ill. 2d 277.

**C. The Authority Cannot, as Here, Impose More Onerous Tests or Conditions Incident to Driving Than Those Imposed on Motorists Under the Illinois Motor Vehicle Code.**

The Illinois Motor Vehicle Code applies to all motorists including public transit and private bus operators and school bus operators.[18] The legislature has regulated the conduct relevant here—i.e., operating a vehicle under the influence of alcohol

14. A. 4 n. 3.
15. A. 4.
16. A. 4 n. 3.
17. § 11-501.1(a); A. 19.
18. Ill. Rev. Stat. 1975, ch. 95½, §§ 1-107, 1-111, 1-140, 1-146, 11-205, 11-208, 11-208.1; A. 12-24.



or narcotics—and a political subdivision of the state may not prohibit "conduct permitted by statute, or vice versa, which is a complete departure from the policy of the State as declared by general legislation," *Village of Mount Prospect* v. *Malouf*, 103 Ill. App. 2d 88, 92 (1968); *City of Chicago* v. *Union Ice Cream Mfg. Co.*, 252 Ill. 311, 315 (1911); *City of Rockford* v. *Floyd*, 104 Ill. App. 2d 161, 165, 169 (1969). The policy of the ordinance must be "completely consistent with the general policy declared" in the statute. *Village of Mount Prospect* v. *Malouf*, 103 Ill. App. 2d at 92.

The court of appeals agreed with the petitioners that the bus operators were subject to more intrusive tests administered under less protective triggering standards than other drivers. Its conclusion, however, unsupported by any Illinois citations, that the Authority's "paramount interest in protecting the public"[19] permits the Authority to " 'prohibit what the statute permits,' " *ibid.*, ignores the careful legislative scheme, and denigrates the State's informed judgment.

Alternatively, if a question exists concerning the applicability of the Illinois Motor Vehicle Code's protections to the bus operators, rather than declare inapt an ostensibly controlling state statute, the court of appeals should have refrained from passing upon the statute. Construction by the state court of the intent and meaning of state law is warranted where state interpretation would obviate the need for decision on the federal constitutional question. *Boehning* v. *Indiana Employees Assoc.*, 46 L.Ed 2d 148, 150 (1975); *Lake Carriers' Assn* v. *MacMillan*, 406 US 498 (1972); *Harman* v. *Forssenius*, 380 US 528, 534-36 (1965) *Clay* v. *Sun Ins. Office*, 363 US 207 (1960).

Any construction should have been made only after the district court made findings after a hearing, on the reach of the state statute. *Bishop* v. *Wood*, 48 L.Ed. 2d 684, 691 (1976). The district court herein held no hearing, made no such findings,

19. A. 4.

and the court of appeals affirming, cited no Illinois authority. In the interests of comity, the petition for a writ of certiorari should be granted.

## II.

## THE COURT OF APPEALS' DECISION CONFLICTS WITH THE PRINCIPLES ENUNCIATED BY THIS COURT IN BALANCING CONSTITUTIONAL RIGHTS.

### A. The Court of Appeals' Decision Conflicts with This Court's Decision in Schmerber v. California.

This Court, in *Schmerber* v. *California,* 384 US 757 (1966), concluded that the expectation of privacy is at its highest where physical intrusions into the human body are concerned. *Id.* at 770. *Schmerber* has been explicitly interpreted by a three judge court to mean that the fourth amendment proscribes coercedly taking—i.e. proscribes sanctions for refusal to take—blood tests, authorized by a state implied consent statute, absent lawful arrest and emergency circumstances. *Holland* v. *Parker,* 354 F.Supp. 196, 199 (CD SD 1973). These standards are incorporated in the Illinois Motor Vehicle Code but not in the challenged work rules.[19] The court of appeals, contrary to *Schmerber*, carved out exceptions for public bus operators that have no basis in the Illinois statute.

19. The court of appeals found that *Holland* "deals with drivers in general and is inapt," not that its principles were faulty. A. 4, n. 3. The Illinois Motor Vehicle Code. § 11-501.1(a) A. 19, applies the "incident to a lawful arrest" principle to the coerced taking of a breathalyzer test.



### B. Decisions of This Court Require That to Justify Impairment of a Fundamental Right the Authority Must Show That a Compelling State Interest Is in Fact Served by the Work Rules Which Constitute the Least Drastic Restriction on the Right Impaired.

Even where no applicable state statute restricts infringements on the rights of motor vehicle operators, the mere assertion of "reasonable conditions" or "paramount interest" does not, as the court of appeals reasons, extinguish fourth amendment rights and provide untrammeled breadth to the scope of state action.[20]

In adjudicating first amendment rights of public employees, this Court requires the state to prove: (1) a compelling interest in advancing its regulation; (2) that the means employed will effectuate the state interest; and (3) that the means constitute the least onerous restriction of constitutional rights which will accomplish the state's purpose. *Elrod* v. *Burns,* 49 L.Ed. 2d 547, 558-560 (1976).

Although conceding that the impairment of a public employee's first amendment rights must be justified by a compelling state interest, the court of appeals conspicuously declined to require the same justification where a public employee's fourth amendment rights are impaired. In fact, the court of appeals concluded that the traditional analysis is unwarranted because the bus operators lack fourth amendment rights: "In view of this [paramount] interest, members of plaintiff Union have no reasonable expectation of privacy with regard to submitting to blood and urine tests."[21]

20. The sweeping language of the work rules makes it evident that despite "several distinct justifications for the [regulation] in its broadest terms, there is no reason to assume that the [regulation] can or will be decisively narrowed." *Erznoznik* v. *City of Jacksonville,* 422 US 205 (1975).

21. A. 4.

The court of appeals' reduction to irrelevance considerations of constitutional adjudication such as precision of regulation, least drastic restriction and effective state action,[22] marks a return to the era of the "irrebuttable presumption" of rational state action abandoned in *Cleveland Bd. of Ed.* v. *LaFleur*, 414 US 632 (1974), and *Bell* v. *Burson*, 402 US 535 (1971). It also marks a further step backward by conditioning the receipt of a governmental benefit upon the waiver of a constitutional right; a concept which has been declared impermissible by this Court in the context of first amendment rights, *Keyishian* v. *Bd. of Regents*, 385 US 589 (1967), as well as in the context of fifth amendment rights, *Sanitation Men Association* v. *Commissioner*, 392 US 280, 285 (1968), and *Garrity* v. *New Jersey*, 385 US 493, 496 (1967). This Court has not passed upon fourth amendment rights in this context which in itself is an important reason for granting the writ of certiorari in this case.

### C. The Court of Appeals Failed to Distinguish Standards of Constitutional Adjudication Where Fundamental Rights Are Involved from Applicable Standards Where the General Protective Ambit of the Fourteenth Amendment Is Involved.

The court of appeals' drift away from settled principles of constitutional balancing underscores the need to clarify the applicability of this Court's decision in *Kelly* v. *Johnson*, 47 L.Ed. 2d 708 (1976). As interpreted by the court of appeals, *Kelly* v. *Johnson* is a signal from this Court to cease applying

22. *Holland* v. *Parker* demonstrated for instance that the State regulation therein, as the work rules here, had the purported interest of keeping the drunk driver off the road. Yet, in actuality, summary revocation of an operator's license, like summary discharge upon refusal to take a blood test, operates not to remove the potentially drunk driver from the highways but to punish the suspect who refuses to submit to the test, "which is in itself an irrelevant question." 354 F. Supp. at 202. Both courts below dispensed with the requirement that the state must show its means to be efficacious.



the three pronged—compelled interest, in fact served, by the least drastic restriction—test in scrutinizing substantive rights under fourteenth amendment due process. *See, e.g., Roe* v. *Wade*, 410 US 113, 152-156 (1973); *Board of Regents* v. *Roth*, 408 US 564, 572 (1972); *Bell* v. *Burson*, 402 US 535 (1971). Moreover, the court of appeals construed *Kelly* as dispositive of the bus operators claim; i.e., it applies no stricter scrutiny of state purpose, where the instant fourth amendment right is involved, than where "the more general contours of the substantive liberty interest protected by the Fourteenth Amendment", *Kelly* v. *Johnson*, 47 L.Ed. 2d at 714, are involved.

Diverging standards for constitutional adjudication, made conspicuously manifest after *Kelly* v. *Johnson*, between fundamental rights and fourteenth amendment substantive rights, should be resolved and standards applicable to fourth amendment rights of public employees explicitly identified.

## CONCLUSION.

Before the decisions below, public employees were ostensibly covered by the reach of a state statute regulating blood searches. Moreover, they expected that their fourth amendment rights compelled the more exacting constitutional scrutiny owed first amendment fundamental rights and applied by this court in *Schmerber*. They have found rather that what appeared after *Schmerber* to be a fundamental right is, because they are public employees, a "claim that implicates only the more general contours of the substantive liberty interest"; that their fourth amendment rights do not balance with a proven compelling state interest but dissolve entirely when one is but alleged. In order to provide badly needed guidance in the administration of constitutional law to public employees asserting unquestionable fourth amendment rights, and to undo the lower courts' conflict

with express state statutory protections, the petition for the writ of certiorari should be granted.

Respectfully submitted,

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## APPENDIX.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 76-1166

DIVISION 241, AMALGAMATED TRANSIT UNION (AFL-CIO),
*Plaintiff-Appellant,*

*vs.*

LAWRENCE SUSCY, et al.,
*Defendants-Appellees.*

Appeal from the United States District Court
for the Northern District of Illinois,
Eastern Illinois—No. 75 C 2709
ALFRED Y. KIRKLAND, *Judge.*

Argued May 28, 1976—Decided July 22, 1976

Before CLARK, *Associate Justice (Retired),** FAIRCHILD, *Chief Judge,* and CUMMINGS, *Circuit Judge.*

PER CURIAM. Plaintiff is a union that represents 5,500 bus operators and others employed by the Chicago Transit Authority (CTA). It has filed a four-count complaint under the Civil Rights Act (42 U. S. C. § 1983) against eight CTA officials, attacking the constitutionality of Rules 10 and 14 of the General Rule Book and of General Bulletin G2-75 of the CTA insofar as they require CTA bus operators to submit to blood and urine tests when they are involved in "any serious accident", or suspected of being intoxicated or under the influence of narcotics.

* The Honorable Tom C. Clark, Associate Justice (Retired) of the Supreme Court of the United States, is sitting by designation.

In an unreported memorandum opinion, the district court upheld the constitutionality of these rules as "both desirable and necessary" and "not * * * unreasonable." Therefore, the court granted defendant's motion to dismiss with respect to Count I of the complaint challenging the constitutionality of the CTA rules as written.[1]

Defendants first argue that the court's order granting their motion to dismiss is not a final order. We disagree because the Union has appealed from the district court's dismissal of Count I, the only remaining count in the case. See note 1 *supra*. Therefore, the only question before us is the facial validity of the CTA rules.

Rule 10 of the CTA General Rule Book provides:

> "Employees are subject to physical examinations and other medical tests, as deemed necessary, to assume fitness to perform their assigned duties."

Rule 14(a) provides in pertinent part:

> "The following acts are not permissible: (a) Use or possession of intoxicating liquor or narcotics of any kind while on duty, or reporting for duty under the influence of same. Use of illegal drugs is forbidden whether on or off duty."

CTA General Bulletin G2-75 provides:

> "Operating employees directly involved in any serious accident such as a collision of trains, collision of buses, derailment, bus and person or serious collision with vehicle or fixed object, may be required to be hospitalized for medical attention, a physical examination and/or a blood and urinalysis test.

1. The motion to dismiss was simultaneously denied with respect to the Union's allegations in Counts II-IV that the CTA rules have been applied in a manner violating the constitutional rights of the Union's members, because the court could not "say with certainty at this time that plaintiff can prove no set of facts" in support of such allegations. Subsequently, the district court granted the plaintiff's motion to dismiss without prejudice Counts II-IV "as they relate to application of the CTA regulations complained of herein."



> "Employees suspected of being under the influence while on duty in violation of rule No. 19 [now 14(a)] may be required to take a blood and urinalysis test.
>
> "Employees who are requested to take a blood and urinalysis test in accordance with rule No. 15 [now 10] and refuse will be subject to discipline under rule No. 19 [now 14] in the book of rules."

Under Rule 14, the employee can be discharged for violations of Rule 10.

The Union argues that the rules are facially invalid under the Fourth and Fourteenth Amendments. The test of constitutionality for invasions of a public employee's protected rights are derived from the nature of the rights involved. Where the employee argues he is being deprived of a right specifically protected by the Constitution, the standard generally applicable to deprivations of that right applies. For instance, limitations on the First Amendment rights of a public employee must be justified by a compelling state interest. *Elrod* v. *Burns*, ..... U. S. ....., ....., 44 LW 5091, 5096; *Illinois State Employees Union* v. *Lewis*, 473 F. 2d 561, 572-573 (7th Cir. 1972). However, where the employee asserts that his right is protected by the general ambit of the Fourteenth Amendment, the state need show only that the rule is reasonable. *Kelley* v. *Johnson*, ..... U. S. ....., ....., 44 LW 4469, 4471. Therefore, if there is no invasion of Fourth Amendment rights, it follows that there is also no violation of the Fourteenth Amendment.[2]

The Fourth Amendment protects an individual's reasonable expectation of privacy from unreasonable intrusions by the state. Whether the individual has a reasonable expectation of privacy and whether the intrustion is reasonable are determined by balancing the claims of the public against the interests of the individual. *United States* v. *Martinez-Fuerte*, ..... U. S. .....,

2. Any due process claims fail under *Kelley* v. *Johnson*, *supra*; *Schmerber* v. *California*, 384 U. S. 758; and *Breithaupt* v. *Abram*, 352 U. S. 432.

....., 44 LW 5336, 5339; *Camara* v. *Municipal Court*, 387 U. S. 523, 534-535. It is clear that a governmental agency can place reasonable conditions on public employment. *Kelly* v. *Johnson, supra*, ..... U. S. at ....., 44 LW at 4471; *Pickering* v. *Board of Education*, 391 U. S. 563, 568. In this case, the CTA has a paramount interest in protecting the public by insuring that bus and train operators are fit to perform their jobs. In view of this interest, members of plaintiff Union can have no reasonable expectation of privacy with regard to submitting to blood and urine tests. *United States* v. *Cogwell*, 486 F. 2d 823, 835 (7th Cir. 1973), certiorari denied, 416 U. S. 959. Further, the conditions under which the intrustion is made and the manner of taking the samples are reasonable. *Cupp* v. *Murphy*, 412 U. S. 291, 295; *Wyman* v. *James*, 400 U. S. 309, 318; *Schmerber* v. *California, supra*, 384 U. S. at 771.

As evidenced by the General Bulletin, blood and urinalysis tests are given in hospitals only to operating employees directly involved "in any serious accident" or "suspected of being under the influence" of intoxicating liquor or narcotics. As the record shows, no medical testing of this type is required unless two supervisory employees concur. Under these conditions and because "a valid public interest justifies the intrusion contemplated," probable cause exists.[3] *Camara* v. *Municipal Court, supra*, 387 U. S. at 539. Because of the nature of the tests required, no warrant is necessary. *Schmerber* v. *California, supra*, 384 U. S. at 770-771. Finally, performing the tests in a hospital is a reasonable procedure. *Ibid.* at 771.

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3. The distinction between bus drivers and other drivers justifies a stricter standard for the former. Therefore, the Illinois breathalyzer laws (Ill. Rev. Stat. (1975), ch. 95½, §§ 11.501-11.501.1) are of no concern in resolving the Union's Fourth Amendment claim. Similarly, *Holland* v. *Parker*, 354 F. Supp. 196 (D. S. D. 1973), deals with drivers in general and is inapt. In view of the more substantial interest a state has in the competence of its bus drivers, the requirement of a lawful arrest prior to submitting to the blood test is inapplicable here.



Certainly the public interest in the safety of mass transit riders outweighs any individual interest in refusing to disclose physical evidence of intoxication or drug abuse. As we view them, the CTA rules and General Bulletin facially comply with the Fourth Amendment standards, so that employees who fail to comply with these rules and the General Bulletin may be discharged. *Sanitation Men* v. *Sanitation Commissioner*, 392 U. S. 280, 285. We of course express no opinion as to the application of those provisions, because that question is not before us.

Order affirmed.

IN THE UNITED STATES DISTRICT COURT

* * (Caption—Civil Action No. 75 C 2709) * *

## MEMORANDUM OPINION AND ORDER

This matter comes before the Court on motion of defendants to dismiss the complaint. It is an action seeking injunctive and other relief against enforcement of certain rules of the Chicago Transit Board of the Chicago Transit Authority ("CTA") which provide that under certain circumstances any CTA employee may be required to submit to blood and urinalysis tests. The rules further provide that any employee refusing to submit to such tests may be subject to discipline, including discharge.

Jurisdiction is based on the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, as well as 42 U. S. C. § 1983 and 28 U. S. C. § 1343.

Plaintiff is a voluntary unincorporated labor organization domiciled in Chicago which serves as the exclusive bargaining representative for approximately 8,500 employees of the CTA. Defendants are members of the Chicago Transit Board of the CTA. Defendant Blaa is the CTA's Manager of Transportation and defendants John Doe and Richard Roe are designations for supervisory employees of the CTA, with varying degrees of disciplinary and other authority over operating employees.

The CTA is a municipal corporation established by the Illinois General Assembly pursuant to the Metropolitan Transit Authority Act, Ch. 111⅔ §§ 301 *et seq.*, Ill. Rev. Stat. 1973 ("Transit Act"). The CTA is authorized by the Transit Act to promulgate rules and regulations "necessary and convenient" to accomplish the operation of a public mass transportation system in Metropolitan Cook County. To that end, the CTA has enacted, maintains and enforces certain rules regarding the use of drugs and alcohol by its employees.



Rule 10, CTA General Rule Book provides:

> Employees are subject to physical examinations and other medical tests, as deemed necessary, to assure fitness to perform their assigned duties.

Rule 14(A) of the CTA General Rule Book Provides in pertinent part:

> The following acts are not permissible: (a) Use or possession of intoxicating liquor or narcotics of any kind while on duty, or reporting for duty under the influence of same. Use of illegal drugs is forbidden whether on or off duty.

On January 25, 1975 the CTA issued General Bulletin G2-75 which provided as follows:

> Operating employees directly involved in any serious accident such as a collision of trains, collision of buses, derailment, bus and person (sic) or serious collision with vehicle or fixed object, may be required to be hospitalized for medical attention, a physical examination and/or a blood and urinalysis test.
>
> Employees suspected of being under the influence while on duty in violation of Rule No. 19 (now Rule No. 14) may be required to take a blood and urinalysis test.
>
> Employees who are requested to take a blood and urinalysis test in accordance with Rule No. 15 (Now Rule No. 10) and refuse will be subject to discipline under Rule No. 19 (now Rule No. 14) in the book of rules.

The complaint alleges that these rules are violative, both on their face and as applied, of the due process protections of the Fifth and Fourteenth Amendments, of the Fourth Amendment protection against unreasonable search and of rights provided by the Illinois legislature and the Illinois Constitution.

Defendants argue in their motion to dismiss that there is only one issue before the Court: whether the complaint states a claim under the Fourth Amendment, i.e., whether operating employees of a public mass transit system can, in the absence of probable cause, be compelled to submit to a physical examination, including blood and urinalysis testing.

Plaintiff argues that this complaint is not subject to dismissal under the rule of *Conley* v. *Gibson*, 355 U. S. 41 (1957), which provides that:

> In appraising the sufficiency of the complaint we follow of course the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff could prove no set of facts in support of his claim which would entitle him to relief. (355 U.S. at 45, 46)

The complaint alleges that the rules are not written or enforced in a manner reasonably calculated to effectuate any legitimate CTA interest in preventing accidents or identifying drivers who are under the influence of drugs or alcohol. The rules authorize compulsory tests on the basis of a supervisor's "suspicion" that any employee is intoxicated or upon the occurrence of any "serious" accident without regard to whether there is reason to believe that the accident was the result of the employee's use of drugs or alcohol. It is further alleged that the rules provide that a supervisor "may" require such tests, thus leaving a search to the uncontrolled discretion of the supervisor.

Defendants argue, and the Court agrees, that the State has a substantial interest in the detection and elimination of operating employees who are under the influence of alcohol or drugs while on duty. It is beyond dispute that the CTA must enact and enforce regulations designed to protect the thousands of persons who daily entrust their lives and safety to the care of CTA operating employees. It is likewise beyond dispute that alcohol and drugs are serious problems throughout our society. Those problems assume major proportions in context of employment of persons responsible for the safety of the public.

This Court is of the opinion that regulations properly designed to insure that CTA drivers are not under the influence of drugs or alcohol are both desirable and necessary. Further, the Court agrees that compulsory blood and urinalysis tests or other tests of that nature may be necessary to detect those CTA employees who would endanger the commuting public.



There is also support in the case-law that public employees may be discharged for refusal to properly account for the performance of their official duties. *Gardner* v. *Broderick*, 392 U. S. 273 (1968); *Confederation of Police* v. *Conlisk*, 489 F. 2d 891 (7th Cir. 1973).

This Court holds that the CTA rules, as written, are not unconstitutional. The Court does not find the rules to be unreasonable, and the provision for exercise of supervisory discretion does not render them constitutionally infirm.

Accordingly, defendants' motion to dismiss is granted with respect to that portion of the complaint challenging the constitutionality of the CTA rules as written.

However, this Court cannot say with certainty at this time that plaintiff can prove no set of facts in support of its allegations that the CTA rules have been applied in a manner which violates the constitutional rights of plaintiff's CTA employee members.

Defendants' motion to dismiss is denied with respect to that portion of the complaint which alleges that the CTA rules have been applied by defendants in a manner which violates the constitutional rights of plaintiff's CTA employee members.

Enter: /s/ ALFRED Y. KIRKLAND,
Alfred Y. Kirkland,
*Judge.*

Dated: Dec. 30, 1975.

## Constitutional Provisions, Statutes and Regulations Involved.

*Amendment IV.*

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

*Amendment XIV.*

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * *

*Title 42 USC § 1983.*

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.



## Metropolitan Transit Act.

Chapter 111⅔ Ill. Rev. Stat. 1975.

*Section 319.*

Administrative Board—Qualification of Members—Compensation.

The governing and administrative body of the Authority shall be a board consisting of seven members, to be known as Chicago Transit Board. * * *

*Section 330.*

Rules and Regulations Governing System—Charges for Transportation.

The Board shall make all rules and regulations governing the operation of the transportation system, shall determine all routings and change the same whenever it is deemed advisable by the Board, subject to the provisions of any ordinance granting rights to the Authority. * * *

*Section 331.*

Ordinances—Fines and Penalties.

The Board shall have power to pass all ordinances and make all rules and regulations proper or necessary to regulate the use, operation and maintenance of its property and facilities, and to carry into effect the powers granted to the Authority, with such fines or penalties as may be deemed proper. No fine or penalty shall exceed two hundred dollars ($200.00), and no imprisonment shall exceed six (6) months for one offense. All fines and penalties shall be imposed by ordinances, which shall be published in a newspaper of general circulation published in the metropolitan area. No such ordinance shall take effect until ten days after its publication.

ILLINOIS VEHICLE CODE.

Chapter 95½, Ill. Rev. Stat. 1975.

*Section 1-107.*

Bus.

Every motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

*Section 1-111.*

Driver.

Every person who drives or is in actual physical control of a vehicle.

*Section 1-140.*

Local Authorities.

Every county, municipal and other local board or body having authority to enact laws relating to traffic under the constitution and laws of this State.

*Section 1-146.*

Motor Vehicle.

Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. * * *



*Section 11-205.*

Public Officers and Employees to Obey Act—Exceptions.

(a) The provisions of this Chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this State or any county, city, town, district or any other political subdivision of the State, except as provided in this Section and subject to such specific exceptions as set forth in this Chapter with reference to authorized emergency vehicles.

(b) The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected violator of the law or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this Section, but subject to the conditions herein stated.

(c) The driver of an authorized emergency vehicle may:

1. Park or stand, irrespective of the provisions of this Chapter;

2. Proceed past a red or stop signal or stop sign, but only after slowing down as may be required and necessary for safe operation;

3. Exceed the maximum speed limits so long as he does not endanger life or property;

4. Disregard regulations governing direction of movement or turning in specified directions.

(d) The exceptions herein granted to an authorized emergency vehicle, other than a police vehicle, shall apply only when the vehicle is making use of either an audible signal when in motion or visual signals meeting the requirements of Section 12-215 of this Act.

(e) The foregoing provisions do not relieve the driver of an authorized emergency vehicle from the duty of driving with due regard for the safety of all persons, nor do such provisions protect the driver from the consequences of his reckless disregard for the safety of others.

(f) Unless specifically made applicable, the provisions of this Chapter, except those contained in Section 11-204 and Articles IV and V of this Chapter, shall not apply to persons, motor vehicles and equipment while actually engaged in work upon a highway but shall apply to such persons and vehicles when traveling to or from such work.

*Section 11-208.*

Powers of Local Authorities.

(a) The provisions of this Chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles;

2. Regulating traffic by means of police officers or traffic control signals;

3. Regulating or prohibiting processions or assemblages on the highways;

4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;

5. Regulating the speed of vehicles in public parks subject to the limitations set forth in Section 11-604 of this Chapter;

6. Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection or a yield the right-of-way intersection and requiring all vehicles to stop or yield the right-of-way at one or more entrances to such intersections;



7. Restricting the use of highways as authorized in Chapter XV of this Act;[1]

8. Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee;

9. Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;

10. Altering the speed limits as authorized in Section 11-604 of this Chapter;

11. Prohibiting U-turns;

12. Prohibiting pedestrian crossings at other than designated and marked crosswalks or at intersections;

13. Prohibiting parking during snow removal operation;

14. Adopting such other traffic regulations as are specifically authorized by this Chapter.

(b) No ordinance or regulation enacted under subdivisions (1), (4), (5), (6), (7), (9), or (10) of paragraph (a) of this Section shall be effective until signs giving notice of such local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

(c) The provisions of this Chapter shall not prevent any municipality having a population of 500,000 or more inhabitants from prohibiting any person from driving or operating any motor vehicle or motorcycle upon the roadways of such municipality with the electric headlights or headlight on high beam or bright lights, if such vehicle is equipped with electric headlights having both high beam or bright lights and low beam or dimmer lights.

*Section 11-208.1.*

Uniformity.

The provisions of this Chapter of this Act, as amended, and the rules and regulations promulgated thereunder by any State Officer, Office, Agency, Department or Commission, shall be

applicable and uniformly applied and enforced throughout this State, in all other political subdivisions and in all units of local government.

## Article V. Driving While Intoxicated, Transporting Liquor and Reckless Driving.

*Section 11-501.*

Persons Under the Influence of Intoxicating Liquor or Narcotic Drugs.

(a) No person who is under the influence of intoxicating liquor may drive or be in actual physical control of any vehicle within this State.

(b) No person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle may drive or be in actual physical control of any vehicle within this State. The fact that a person charged with a violation of this subsection (b) or has been entitled to use such drug under the law of this State does not constitute a defense against any charge of violation of this subsection (b).

(c) Upon the trial of any action or proceeding arising out of the acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of his breath, blood, urine, saliva or other bodily substance is admissable, as provided hereinafter in this paragraph (c) and the result of any such analysis shall give rise to the following presumptions:

1. If there was at the time of such analysis 0.05 percent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of intoxicating liquor;



2. If there was at the time of such analysis in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining whether such person was under the influence of intoxicating liquor;

3. If there was at the time of such analysis 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor.

Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood. Evidence based upon a chemical analysis of blood, urine, breath or other bodily substance shall not be admitted unless such substance was procured and such analysis made with the consent of the person as provided by this Chapter, whose bodily substance was so analyzed.

The foregoing provisions of this paragraph (c) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of intoxicating liquor.

(d) Chemical analysis of the person's blood or breath to be considered valid under this Section must be performed according to uniform standards adopted by the State Department of Public Health, in cooperation with the Superintendent of State Police, and by an individual possessing a valid permit issued by that Department for this purpose. The State Department of Public Health is authorized to approve satisfactory techniques or methods to ascertain the qualifications and competence of individuals to conduct such analysis and to issue permits which shall be subject to termination or revocation at the discretion of the State Department of Public Health.

(e) When a unconscious person or person otherwise incapable of refusal is given a blood test at the request of a law

enforcement officer under the provisions of this Chapter, only a physician authorized to practice medicine in all its branches, a registered nurse or other qualified person may withdraw blood, in a manner prescribed by the Department of Public Health for the purpose of determining the alcoholic content therein.

(f) The person tested may have a physician authorized to practice medicine in all its branches, a qualified technician, chemist, registered nurse, or other qualified person of his own choosing to administer a chemical test or tests, at his own expense, in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person does not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(g) Upon the request of the person who submitted to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests must be made available to him or his attorney.

(h) Evidence of a refusal to submit to a chemical test is inadmissible in any civil action or proceeding, or criminal action under Section 11-501 of this Chapter or in any action brought against him for a violation of a local ordinance prohibiting driving a motor vehicle while under the influence of intoxicating liquor. However, nothing in this paragraph (h) shall prevent the admission of evidence of such refusal in a hearing on the suspension of a person's privilege to operate a motor vehicle under Section 2-118 of this Act as amended.

(i) Every person who is convicted of a violation of this Section shall be guilty of a Class A misdemeanor.

The Secretary of State shall revoke the driver's license of any person convicted under this Section.



SECTION 11-501.1.

*Suspension of license—Implied consent.*

(a) Any person who, after September 30, 1972, drives a motor vehicle anywhere within this State thereby consents, under the terms of this Section, to take and complete a test or chemical analysis of his breath to determine the alcoholic content of his blood when made as an incident to and following his lawful arrest, evidenced by the issuance of a Uniform Traffic Ticket, for an offense as defined in Section 11-501 of this Act or a similar provision of a municipal ordinance. Within a reasonable time following any such arrest, a police officer shall request the person arrested to submit to such analysis of his breath upon a breath testing instrument approved by the Department of Public Health in consultation with the Department of Law Enforcement which will automatically display the test results visually to the arrested person and provide for an automatic printed test record. A test shall consist of 2 breath analyses taken not less than 15 minutes apart. Each printed recording shall also contain an automatically printed record of the reading of the testing device made immediately prior to the recording for the tested person. Each recording shall contain the date and time on which the test was given, which may be manually printed on the recording.

The officer shall make an oral statement and concurrently deliver to the arrested person a printed notice supplied by the Secretary of State in the English and Spanish languages and any other languages deemed appropriate by the Secretary of State which shall advise the arrested person:

(1) that by his driving a motor vehicle in this State he has consented to take a test consisting of 2 breath analyses which shall be administered not less than 15 minutes apart to determine the alcoholic content of his blood when such test is made as an incident to and following his lawful

arrest for an offense of driving a motor vehicle while under the influence of intoxicating liquor,

(2) that he may refuse to submit to either such analysis and that his refusal to submit to either analysis within 90 minutes after receiving the notice may result in the suspension of his privilege to operate a motor vehicle for 3 months on his first such arrest and refusal and for 6 months on his second and each subsequent such arrest and refusal within 5 years,

(3) that he may consult with an attorney or other person by phone or in person within that 90 minutes,

(4) that his failure to submit to and complete the test may be admitted in evidence against him in any hearing concerning the suspension, revocation or denial of his license or permit,

(5) that he will receive a duplicate original or a photocopy of the results of any such test to which he submits at the request of the police,

(6) that the results of such test may be introduced in evidence against him to support the charge of driving while under the influence of intoxicating liquor, and

(7) that a reading of .10% or more by weight of alcohol in the blood establishes a presumption of being under the influence of intoxicating liquor, and

(8) that he may secure additional chemical tests at his own expense and that such tests should be taken as soon as possible and are customarily available from hospitals, medical laboratories and physicians, and

(9) that upon his request full information concerning the results of such test he took at the request of the police officer will be made available to him or his attorney.

After being so advised the arrested person may study the written notice and may consult with an attorney or other person by phone or in person but refusal to submit to the test within 90 minutes after being given the written notice shall constitute a refusal to take the test. Failure to consult counsel shall not excuse or mitigate the effect of the refusal to take or complete the test. No test shall be given to any person with-



out the written permission of that person; willful refusal to give such written permission, however, shall constitute refusal to submit to the test within the meaning of this Section.

If the arrested person is detained in the custody of the police after such test has been administered, the police shall, at the request of the arrested person, facilitate the prompt securing of an additional chemical test by a qualified person of the arrested person's choice and at his own expense as authorized by paragraph (f) of Section 11-501 and to transport the subject to a location within the county of arrest where services are available as defined by paragraph (f) of Section 11-501. If these services are not available in the county of arrest, then ansportation shall be to the next adjacent county where the services are available.

(b) Any such test made as an incident to and following the lawful arrest shall be performed according to uniform standards and procedures adopted by the State Department of Public Health in co-operation with the Superintendent of State Police. Such standards and procedures shall include:

(1) Rules and regulations for examining and licensing any individual who shall administer any such test.

(2) Procedures for revoking the license of any such individual.

(3) Rules and regulations for examining and certifying the accuracy of any breath-testing instrument.

Any license issued to any individual to conduct such tests shall expire one year from date of issuance and any individual who desires to be licensed again must be re-examined. Any such breath testing instrument must have been tested for accuracy and certified accurate pursuant to such rules and regulations no more than 30 days prior to the day the arrested person is requested to submit to the test upon the instrument.

(c) Evidence of a refusal to submit to the test or chemical analysis under this Section is inadmissible in any civil action or

proceeding other than a hearing on the suspension of a person's privilege to operate a motor vehicle as provided under the provisions of this Section. Evidence of a refusal to submit to the test under this Section is inadmissible in an action under Section 11-501 of this Act, or in an action for violation of a local ordinance prohibiting driving a motor vehicle while under the influence of intoxicating liquor. No evidence based upon a test or chemical analysis of breath shall be admitted into evidence in a proceeding under Section 11-501 unless corroborated by an automatically printed recording of the reading of the testing device and unless administered within 150 minutes following such lawful arrest of the person tested.

No evidence of any test taken pursuant to this Section is admissible in any criminal proceeding except in a proceeding under Section 11-501. No evidence of any test may be submitted in a proceeding under Section 11-501 until probable cause is shown that the person was operating a motor vehicle in the State of Illinois while under the influence of intoxicating liquors.

(d) The arresting officer shall file with the Clerk of the Circuit Court for the county in which the arrest was made, a sworn statement naming the person refusing to take and complete the test requested under the provisions of this Section. Such sworn statement shall identify the arrested person, his driver's license number and current residence address and shall specify the refusal of that person to take the test requested and the time, place or places where such request was made. Such sworn statement shall include a statement that the arresting officer had reasonable cause to believe the person was driving the motor vehicle within this State while under the influence of intoxicating liquor and that such test was made as an incident to and following the lawful arrest for an offense as defined in Section 11-501 of this Act or a similar provision of a municipal code, and that the person, after being arrested for an offense arising out of acts alleged to have been committed while so driving refused to submit to and complete a test as requested



orally and in writing as provided in paragraph (a) of this Section.

The Clerk shall thereupon notify such person in writing that his privilege to operate a motor vehicle will be suspended unless, within 28 days from the date of mailing of the notice, he shall request in writing a hearing thereon. If such person fails to request a hearing within such 28 day period, the Clerk shall so notify the Secretary of State who shall automatically suspend such person's driver's license, the privilege of driving a motor vehicle on highways of this State given to a nonresident, or the privilege which an unlicensed person might have to obtain a license under the Driver's License Act,[1] as provided in Paragraph (a) of this Section.

If such person desires a hearing, he shall petition the Circuit Court for and in the county in which he was arrested for such hearing. Such hearing shall proceed in the Court in the same manner as other civil proceedings, except that the scope of such proceedings shall cover only the issues of whether the person was placed under arrest for an offense as defined in Section 11-501 of this Act or a similar provision of a municipal ordinance, whether the arresting officer had reasonable grounds to believe that such person was driving while under the influence of intoxicating liquor, whether the person was informed orally and in writing as provided in paragraph (a) that his privilege to operate a motor vehicle would be suspended if he refused to submit to and complete the test and whether, after being so advised, he refused to submit to and complete the test upon request of the officer.

Immediately upon the termination of the Court proceedings, the Clerk shall notify the Secretary of State of the Court's decision. The Secretary of State shall thereupon suspend the driver's license, the privilege of driving a motor vehicle on highways of this State given to a nonresident, or the privilege which an unlicensed person might have to obtain a license under the Driver's License Act, of the arrested person if that be the deci-

sion of the Court. If the Court recommends that such person be given a restricted driving permit to prevent undue hardship, the Clerk shall so report to the Secretary of State.

(e) Regardless of whether such person petitions the Court for a Court proceeding as provided in Paragraph (d) of this Section, whenever a driver's license is suspended under this Section, the Secretary of State may, if application is made therefor by the person whose license is so suspended, issue such person a restricted driver's permit, to prevent undue hardship, in the same manner, under the same conditions and with the same limitations specified in Section 6-205 of this Act.

If the person has had a Court hearing as provided for in Paragraph (d) and if the Court recommended that such person be given a restricted driver's permit to prevent undue hardship, this recommendation shall be made a part of the hearing before the Secretary of State.

Any person who is dead, unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed to have withdrawn the consent provided by this Section.

Notwithstanding any other provision of Subsection (i) of Section 11-501 of this Act, the Court may, in lieu of a sentence of imprisonment for a conviction under Section 11-501, order any person to serve a term of not less than 2 days in a hospital, alcoholic or rehabilitation center, or other such agency or institution, under such terms and conditions as may to the Court be appropriate.

CHICAGO TRANSIT AUTHORITY REGULATIONS.

*General Bulletin G2-75.*

Operating employees directly involved in any serious accident such as a collision of trains, collision of buses, derailment, bus and person [sic] or serious collision with vehicle or fixed object, may be required to be hospitalized for medical attention, a physical examination and/or a blood and urinalysis test.



Employees suspected of being under the influence while on duty in violation of rule No. 19 [now 14(a)] may be required to take a blood and urinalysis test.

Employees who are requested to take a blood and urinalysis test in accordance with rule No. 15 [now 10] and refuse will be subject to discipline under rule No. 19 [now 14] in the book of rules.

Rule 10, CTA General Rule Book:

> Employees are subject to physical examinations and other medical tests, as deemed necessary, to assume fitness to perform their assigned duties.

Rule 14(A) of the CTA General Rule Book:

> The following acts are not permissible: (a) Use or possession of intoxicating liquor or narcotics of any kind while on duty, or reporting for duty under the influence of same. Use of illegal drugs is forbidden whether on or off duty.

* * * * *

Supreme Court, U. S.
FILED
NOV 19 1976
MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1976.

**No. 76-559**

DIVISION 241, AMALGAMATED TRANSIT UNION (AFL-CIO),

*Petitioner,*

*vs.*

LAWRENCE SUSCY, DONALD WALSH, JAMES R. QUINN, WALLACE D. JOHNSON, ERNIE BANKS, JAMES BLAA, JOHN DOE AND RICHARD ROE, INDIVIDUALLY AND AS OFFICERS AND REPRESENTATIVES OF THE CHICAGO TRANSIT AUTHORITY, A MUNICIPAL CORPORATION,

*Respondents.*

## MEMORANDUM FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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IN THE

# Supreme Court of the United States

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*Respondents.*

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## MEMORANDUM FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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The decision of the Court of Appeals in this cause is consistent with all of this Court's rulings regarding the constitutional rights of municipal employees. The decision below does not conflict with any federal or state court decision regarding the rights of municipal employees.

Petitioner asks this Court to grant a writ of certiorari because the decision below is contrary to the Illinois breathalyzer statute[1] and contrary to this Court's decision in *Schmerber* v. *California*, 384 U. S. 757 (1966).

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1. Ill. Rev. Stat. (1975) Ch. 95½, par. 11-501 and 11-501.1.

The Illinois breathalyzer statute does not purport to restrict the power of the Chicago Transit Authority ("CTA") to enact ordinances and work rules relating to the fitness of its operating employees and the safety of its employees, passengers and the public.[2] The Illinois statute provides a rule of evidence for criminal prosecutions of drunk driving and defines the permissible uses of breathalyzer test results obtained under its implied consent provisions. It also provides for revocation or suspension of a driver's license under certain circumstances.

The CTA Rules requiring operating employees to submit to physical examination, including a blood test and urinalysis, do not purport to authorize any criminal sanctions or affect an employee's driver's license. Petitioner does not, and can not contend that Respondents have used the results of blood tests and urinalyses except for the limited purpose of determining an individual's ability to operate mass transit equipment in a safe manner.

The CTA Rules are not aimed only at discovering alcohol abuse. The tests are also justified by the need to detect drug abuse and physical ailments, such as untreated diabetes, which can affect a person's ability to operate mass transit equipment safely. As both the District Court and Court of Appeals found, the public interest requires that the CTA detect and discipline employees who are unfit to operate a bus or rapid transit train.

Petitioner's claim under the breathalyzer statute is not supported by logic or common sense. At best, petitioner raises nothing more than a question of statutory interpretation under Illinois civil law—while citing only a criminal case which turned upon an evidentiary issue and is of no relevance.[3] Section 1983[4] does not afford a vehicle whereby federal courts may adjudicate all claims for violation of a state statute by public officials. Petitioner's claim under the breathalyzer statute pre-

2. Ill. Rev. Stat. (1975) Ch. 111⅔, par. 330-31.
3. *People* v. *Todd,* 59 Ill. 2d 534, 322 N. E. 2d 447 (1975).
4. Title 42, U. S. Code § 1983.



sents no substantial federal question and affords no basis for this Court to grant certiorari.

Petitioner also contends that the Court of Appeals' decision conflicts with the decision of this Court in *Schmerber* v. *California,* 384 U. S. 757 (1966). That is plainly not true. The Court of Appeals held that the probable cause requirement of *Schmerber* was satisfied. In support of its holding, the court found that the tests were given only under certain well-defined circumstances and only upon authorization by two supervisory employees.[5] Under these conditions, in the light of the "valid public interest" which justifies the intrusion contemplated, the court held that the probable cause requirement was satisfied.

The opinion of the Court of Appeals in this cause demonstrates that the CTA Rules do not violate the requirements of *Schmerber* v. *California, supra.* The opinion also shows close adherence to the decisions of this Court involving the rights of public employees. *Kelley* v. *Johnson,* ..... U. S. ....., 47 L. Ed. 2d 708 (1976); *Uniformed Sanitation Men Ass'n.* v. *Comm'r.,* 392 U. S. 280 (1968).

In January, 1975, the Illinois Transportation Study Commission ("ITSC") made a number of recommendations regarding improvement of CTA operations. *Ill. Transp. Study Comm'n., Investigation of Five Accidents Involving the Rapid Transit System of the Chicago Transit Authority* (January, 1975). These recommendations were based upon a study of CTA rapid transit operations by an independent consulting firm, public hearings, on-site inspections and reports of other governmental agencies and the CTA itself. As one of the "minimal elements" of a comprehensive CTA program regarding drug and alcohol abuse, the ITSC recommended that the CTA establish procedures to determine conclusively the involvement of drugs or alcohol in any serious accidents involving injuries. A second "minimal element" was a procedure to confirm or disprove

5. The Court of Appeals clearly based this finding upon Answers to Interrogatories filed by Respondents in the District Court.

suspicions of supervisory personnel regarding alcohol or drug abuse.

Alcohol or drug problems among CTA operating employees are not a fancied concern. In order to protect public safety and maintain public confidence in mass transit, these operating employees must be identified and separated from operating responsibilities, if not discharged. The CTA Rules under challenge are clearly a reasonable means of accomplishing this purpose. They allow no search or intrusion which is not directly and narrowly related to the ability of operating employees to drive safely. For these reasons and based upon the authorities cited above, respondents respectfully contend that the CTA Rules do not authorize any unreasonable search under the Fourth Amendment.

We respectfully submit that the Petition for Certiorari should be denied.

Respectfully submitted,

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